

# Company law

## **Important chapter which cover around 60 marks**

CHAPTER NO.	CHAPTER
16.	<i>Board and its powers</i>
1.	<i>Introduction</i>
18.	<i>Meeting</i>
17.	<i>Appointment and remuneration of key Management Personnel</i>
4.	<i>Memorandum of Association &amp; Article of Association</i>
2.	<i>Types of companies</i>
21.	<i>Accounts &amp; Audit</i>
6.	<i>Concept of capital</i>
14.	<i>Institution of Directors</i>
8.	<i>Prospectus</i>

## **Important chapter which cover around 30 marks**

CHAPTER NO.	CHAPTER
32.	<i>Winding up of companies</i>
29.	<i>Limited Liability Partnerships</i>
22.	<i>Distributable Profit &amp; Dividend</i>
20.	<i>Deposits</i>
13.	<i>Transfer &amp; transmission of securities</i>
3.	<i>Promotion &amp; incorporation of companies</i>
10.	<i>Creation and registration of charges</i>
7.	<i>Alteration of share capital</i>
23.	<i>Board's report and disclosures</i>
26.	<i>Majority Rule &amp; Minority Rights</i>
11.	<i>Allotment of securities and issue of certificates</i>
15.	<i>Independent Directors</i>

**Important chapter which cover around**  
**10 marks**

<b>CHAPTER NO.</b>	<b>CHAPTER</b>
24.	<i>Registers, forms &amp; Returns</i>
34.	<i>E-Governance</i>
27.	<i>Comprise &amp; arrangement-an overview</i>
25.	<i>Inspection &amp; Investigation</i>
12.	<i>Membership of company</i>
9.	<i>Debt Capital</i>
28.	<i>Producer companies</i>
19.	<i>Loans &amp; Investments by companies</i>
33.	<i>Striking off</i>
5.	<i>Contracts and conversions</i>

**“DON’T JUST READ THE LAW,  
PLAY WITH IT”**

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- ❖ The chapters which are not covered above, does not have much weightage on Case Law.
- ❖ Students are advised to read module for the same.



## **INTRODUCTION**

- 1. Rajlaxmi is a wealthy lady enjoying large dividend and interest income. She has formed three private companies and agreed with each of them to hold a block of investment as an agent for it income received was credited in the accounts of the company but the company handed back the amount to her as a pretended loan. This way, she divided her income in three parts in a bid to reduce her tax liability. Discuss the legality of the purpose for which three companies were formed.*

**Answer:**

It was held in the case of **Sir Dinshaw Manakjee** petit A.I.R. 1927 Bombay 3711 that where it was found that the sole purpose for which a company was formed was to evade taxes, the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company. In the present situation, the facts are similar to above mentioned case. The reason to which the companies were formed by the assessee was purely and simply as a means of avoiding super-tax and the companies were nothing more than the assessee herself.

Further, they did no business, but were created simply as legal entities to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans. Therefore, the Court may discard the formation of three private companies as these are being used for tax evasion.

- 2. The Subway Traders Association was constituted by two joint Hindu Families consisting of 104 Members. The Association was carrying the business of trading as Retailers, with the object for acquisitions of gain. The Association was not registered as a Company under the Companies Act or other law. State whether Subway Traders Association is having any legal status?  
Will there be any change in the status of the Association if the members of the Subway Traders Association subsequently reduced to 95?*

**Answer:-**

Refer **Sec.464** and **Kumar Swami Chettiar Case** Decision.

Since two HUFs carry on business, Sec.464 is applicable. Subway Traders Association will be regarded as illegal since the number of Members is 104(i.e.

exceeds 100) and not registered under Companies Act or any other Indian Law.

The illegality of an Illegal Association cannot be cured by a subsequent reduction in the number of its Members.

- 3. *ABC Pvt. Ltd., Company is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?***

**Answer:-**

**Perpetual Succession**

The existence of the company does not come to an end

- ❖ since the existence of the company does not depend upon the life of any or all the members of the company;
- ❖ since the existence of the company can come to an end only in accordance with the provisions of law, viz. dissolution of the company;
- ❖ Since one of the characteristics of the company is '**Perpetual Succession**'.

- 4. *D & Co. was formed with D, his wife, daughter and four sons as its subscribers and the only members. The company took over the shoe business of D for Rs 30000 giving him as consideration, 20000 shares of Re 1 each and debentures worth Rs 10000 with a charge on the company's assets. All members, except D, purchased one share each. D and his two sons constituted the board of directors of the company. Due to general trade expression, the company went into liquidation. The assets of the company amounted to Rs 6000 whereas its creditors amounted to Rs 17000 Rs 10000 due to D (secured by the charge on company's assets) and Rs 7000 due to unsecured creditors. D claims the assets of the company as his debt is secured by the charge over them. On the other hand, the unsecured creditors are contending that they should be paid in priority over D as the company and D is one and the same person. Who is entitled to the assets?***

**Answer:-**

D is entitled to the assets of the company and the contention of the creditors that D and D & Co is one and the same person is untenable.

A company comes into existence when a certificate of incorporation is issued in its name on its incorporation; it attains the characteristics of separate legal entity. In the eyes of law, it is a person altogether different from the subscribers to its memorandum of association or the members who constitute it. Even if after incorporation, the company carries on the business which its subscribers were carrying on before and they are its manager or the same hands receive profits, the company cannot be regarded as their agent or trustee. The magic of separate legal entity makes it possible for the company and its members to enter into contract with each other. In the given problem, therefore D & Co was an entity separate from its subscribers i.e. D his wife, daughter and sons. It did not lose this separate entity by issuing bulk of its shares to D and by appointing him as its director. The contention of the unsecured creditors thus is wrong, further, D could validly be a creditor of D & Co.

In **Salomon Vs. Salomon & Co. Ltd.** a case with facts similar to those given in the problem, a similar view was also upheld by the court.

- 5. A owns a commercial building in New Delhi which he has let out to B, a sole trader. In January, 2010, he made up his mind to commence his own business in the rented premises and in, February 2010, commenced an action against B for its vacation on the ground of his requirements for self-business. Before the case could be decided by the Court, A sold his business to 'A and Co. Ltd. in which he holds bulk of shares and of which he happens to be the Managing Director. State whether in the changed circumstances, the Court would order B to vacate the premises on the ground specified above.**

**Answer:-**

The court would not order to 'B' vacate the premises on the ground of A's requirement for self business in the changed Circumstances because the business to be carried on belongs to A & Co. Ltd. and not A himself. A Company enjoys a separate legal entity and even if a member owns majority of its shares and manages its affairs the two cannot be considered as one person (Salomon vs. Salomon & Co. Ltd.). In the given problem, therefore, A and A & Co. Ltd., are

different personalities. Since the business now belongs to A & Co. Ltd., the need to A acquire the premises for self-business has ceased to exist as such, the Court would not order vacation of premises on the ground specified in his application. In **Tunstall vs. Steigman**, a case with facts similar to those of the given problem, a similar decision was announced by, the Court.

6. *Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.*

**Answer:-**

**Corporate Veil:** After incorporation, the company in the eyes of law is a different person altogether from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though the shareholders control the entire share capital of the company. This is popularly known as Corporate Veil and in certain circumstances the courts are empowered to lift or pierce the corporate veil by ignoring the company and directly examine the promoters and others who have managed the affairs of the company after its incorporation. **Thus, when the corporate veil is lifted by the courts, (i.e., the courts have disregarded the company as an entity), the promoters can be made personally liable for the debts of the company.** In the following **two** circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

**I. UNDER THE STATUTORY PROVISIONS**

- a) Reduction of Members below Statutory Limit.
- b) Improper use of name (sec 12)
- c) Failure to refund application money within 130 days from the date of prospectus (sec 39)
- d) Fraudulent trading (sec 339)

**II. UNDER JUDICIAL DECISIONS**

- a) Protection of Revenue
- b) Prevention of fraud or improper conduct
- c) Determination of character of a company whether it is enemy



- d) Company acting as agent or trustee of the shareholders
- e) Avoidance of welfare legislation
- f) Protecting public policy